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MT LEGISLATIVE HISTORY

Chapter 678 1985

Bill H 286 S _____ Original bill & hist. ___C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) Jan 24	✓C	Hearing Date(s) Mar 12	✓C
_____	___C	Mar 15	✓C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out Jan 24	✓C	Mar 15	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Note: A Free Conference Committee was appointed, but its minutes were not recorded.

(To be kept current -- post bills when entering being heard or leaving committee.) Form CS-32

STATUS SHEET

FORTY-NINTH LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
HB 276	1/19/85	2/14/85 2/15/85	2/15/85	2/15/85					
HB 286	1/19/85	1/24/85	1/24/85			1/24/85			
HB 310	1/22/85	2/4/85 2/5/85	2/5/85			2/5/85			
HB 313	1/22/85	2/11/85	(TABLED 2/11/85)						
HB 323	1/22/85	2/5/85 2/4/85	2/5/85			2/5/85			
HB 332	1/22/85	2/5/85	2/5/85			2/5/85			
HB 333	1/22/85	2/5/85	2/5/85	2/5/85					
HB 335	1/22/85	2/5/85	2/5/85			2/5/85			
HB 340	1/22/85	2/5/85	2/5/85			2/5/85			
HB 341	1/22/85	2/4/85 2/5/85	2/5/85			2/5/85			
HB 352	1/22/85	2/5/85	2/5/85	2/5/85					
HB 353	1/22/85	2/6/85	2/8/85	2/8/85					
HB 357	1/22/85	2/6/85 2/14/85	2/14/85		2/14/85 (AS AMENDED)				
HB 363	1/22/85	2/12/85 2/20/85	2/21/85		2/20/85	AS AMENDED			
HB 366	1/22/85	2/14/85 2/16/85	2/16/85		2/16/85				
HB 370	1/23/85	1/31/85	1/31/85		1/31/85				

20-85

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

January 24, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Thursday, January 24, 1985 at 8:00 a.m. in Room 312-3 of the State Capitol Building.

ROLL CALL: All members were present with the exception of Rep. Gould who had been previously excused.

CONSIDERATION OF HOUSE BILL NO. 246: Hearing commenced on HB 246 with Rep. Connelly, its chief sponsor, testifying. She said what this bill basically does is ask for authority to the court to seize a driver's license on conviction requiring mandatory suspension.

Larry Majerus, administrator for the Motor Vehicle Division, testified in support of the bill. He told the committee that this bill was requested by the department because over the last few years there has been an enormous increase in the their workload largely due to the increase of enforcement of DUI's. As a result, they have had to suspend more licenses.

There being no further proponents nor opponents present to testify on the bill, Chairman Hannah opened the floor up for questioning.

In response to a question of Rep. Eudaily's, Mr. Majerus said there is not authority in the law for judges to suspend. The judge does not actually do any suspending or revoking of driver's licenses in DUI cases.

There being no further questions, hearing closed on HB 246.

CONSIDERATION OF HOUSE BILL NO. 286: Rep. Les Kitselman, chief sponsor of this bill, spoke in favor of the bill. Rep. Kitselman stated that this bill is a bill that takes care of a problem that has arisen with the theft of ultilities. He referred to an incident that happened in Billings. This bill defines what bypassing is, what the individuals are, what tampering means, what utilities mean, what services mean and then simply states that the utility companies would be able to recover reasonable values after a person has been found liable of a theft. He referred to page 3, line 3 to 6 stating that this simply says that the utilities can receive up to three times the reasonable value of the utility's services actually provided and shall award to the utility its costs, reasonable

attorney fees, etc.

John Alke, representing Montana-Dakota Utilities, stated his support for the bill. He said the meat of the bill is really spelled out in section 4 of the bill. He feels that litigation is critical. It is not intended to actually be used against our customers, but rather it is intended to act as a deterrent from attempting to steal utility services. He said that there is a very small group of people who do this who do it at the expense of the other customers. He also said this tampering is a highly dangerous and deadly thing to be involved in. Mr. Alke informed the committee that the county attorney has a workload that will not permit them to prosecute these people.

Mike Zimmerman, attorney for the Montana Power Company, appeared and spoke in favor of this bill. He passed around pictures that show different meters that are being tampered with. He said the power company supports this bill because tampering and theft is a problem -- and the problem that results is that the remaining customers must pick up this additional cost that they would not otherwise have to do. He believes this bill will provide a public policy signal that meter tampering will not be tolerated in this state. Not only will it deter theft in tampering, it will also provide a safety factor to keep people from tampering with the deadly force of electricity.

David Dietrich, attorney for Pacific Power and Light, also testified in support of the bill. He informed the committee that in 1984 there were 24 incidents of meter tampering in the Kalispell area. None of these were prosecuted by the county attorney's office. The problem that remains is that there is not an adequate civil remedy.

There being no further proponents or opponents present to testify on the bill, and Rep. Kitselman closing, the floor was opened to questioning from the committee.

In response to a question asked by Rep. Rapp-Svrcek, Mr. Alke said they determine how long the meters have been tampered with by computing on the low side the electrical usage of the home and the number of people living in that home.

Rep. Rapp-Svrcek requested Rep. Kitselman to state his reasoning behind the three times the reasonable value of the utility services. Rep. Kitselman they calculate this on the low side, and he further feels this is not unreasonable.

There being no further questions, hearing concluded on HB 286. Chairman Hannah called an executive session at this time.

ACTION ON HB 246: Rep. Addy moved that HB 246 DO PASS. The motion was seconded by Rep. Hammond. There being no discussion and the question being asked, the motion passed with Rep. Brown dissenting.

ACTION ON HB 286: Rep. Grady moved that HB 286 DO PASS. Rep. Eudaily seconded the motion. Discussion followed.

Rep. Rapp-Svrcek stated that he has a few problem with the bill. He does agree with the intent of the bill; however, he questions being able to charge a customer, and being able to receive from the customer three times the reasonable value of the utility services given the fact that the utilties cannot really come up with an accurate amount of what services were used.

Rep. Mercer moved to amend the bill by deleting section 5 of the bill. He also wishes to amend page 2, line 5 by adding after "service" the words, "with the intent to obtain the utility service at less than its reasonable value."

Rep. Keyser spoke against the motion. He said that by adding the word intent, you have placed an absolute and almost an impossible burden upon these companies of going into court. He spoke strongly against adding the word intent and feels that by doing so, the bill will be hurt.

Rep. Rapp-Svrcek spoke in favor of Rep. Mercer's amendment. He feels that this language would only protect someone who inadvertently damages their meter.

Rep. Montayne feels that if anything should be amended, the penalties should be made stiffer.

Representative Miles said she has a lot of problems with this bill as far as the liability portion of the bill especially where it concerns other occupants of the building the meter is being tampered with. She stated further that she had no problem as to the intent of this legislation.

Rep. Krueger moved that HB 286 BE TABLED until further action can be taken on it perhaps tomorrow. The motion to table failed 7-9 after having been seconded by Rep. Rapp-Svrcek. (See roll call vote)

The committee considered the previous motion made by Rep. Mercer to include on page 2, line 5 the intent language as previously stated. The motion was seconded by Rep. Eudaily and a roll call vote was taken. The motion failed 4-12.

Rep. Mercer further moved that HB 286 be amended to delete section 5 in its entirety. Rep. Eudaily seconded the motion, and discussion followed.

Rep. Grady spoke against this amendment while Rep. Addy offered his support for the amendment. The question was called and the motion carried unanimously.

Rep. Addy offered another amendment which would amend page 3, line 4, after "provided" strike ", and" and place a "." in lieu thereof and on line 5, strike, "including" and insert, "in addition, the court shall award the prevailing party its costs including reasonable attorneys fees incurred in maintaining or defending the action." Rep. Addy is trying to make this a reciprocal item to be recovered by the prevailing party.

Rep. Hannah explained the intent of the amendment which would give both parties an equal standing as far as payment of costs, attorneys fees to the prevailing parties.

Rep. Mercer spoke in opposition of the amendment. He thinks the legislature should carefully consider what they are doing when they provide these attorney fees. He says this would not give the people incentive to settle their disputes out of court. He stated that Rep. Addy's amendment is needed, but after it is adopted, Rep. Mercer wishes to propose an amendment which would pull attorneys fees out. The question was called for, and the motion to adopt Rep. Addy's amendment was carried with Reps. Eudaily and Grady dissenting.

Rep. Krueger moved to amend on page 3, line 2 by striking the word "shall" and inserting in lieu thereof the word, "may"; also strike the word, "for" and insert "up to". He said this amendment would allow the court to provide treble damages as he so desires up to three times the reasonable value. So basically, the amendment would give the court discretional authority.

Both Reps. Bergene and Grady spoke in opposition of the amendment. Rep. Grady feels that the amendment would take the intent question out. He feels that the deterrent would be taken away if the amendment were adopted. Also speaking in opposition of the amendment was Rep. Montayne.

Rep. Krueger feels that his proposed amendment would benefit both parties and that the deterrent would not be taken away.

It was Rep. O'Hara's feeling that the utility companies would be conservative in their estimates. They are going to be very careful that they can prove what the damages were. He feels that Rep. Krueger's amendment would take out the incentive. Rep. Keyser also spoke against the amendment.

A roll call vote was taken on this motion. Motion failed 13-3. (Rep. Rapp-Svrcek seconded this motion.)

Rep. Keyser further moved to amend page 3, line 4 following the word, "provide" by striking lines 4, 5, 6, 7, and 8 in their entirety. Rep. Miles seconded the motion.

Rep. Addy spoke in opposition to the motion to amend. He said that by striking this language, you are not making it less likely that the power companies are going to bring these actions -- you are making it less likely that the poor innocent consumers are going to defend themselves.

Rep. Mercer stated that any time we extend attorney fees, we should be careful. He pointed out the fact that courts are already overly croweded with litigation and that people should be encouraged to resolve their differences outside the court system.

Rep. Rapp-Svrcek did agree with Rep. Mercer in that the courts are definitely overcrowded; however, he feels we should provide an equal footing between the power companies and the defendants. It was Rep. Keyser's opinion that the defendant has a lot of recourses against the power companies if they are charged wrongly.

Rep. Krueger moved a substitute motion to amend line 4, of page 3, after the newly adopted language, "in addition, the court shall" to strike the word "shall" and insert in lieu thereof the word, "may". The motion was seconded by Rep. Addy. The amendment would allow the award of the prevailing costs in the discretion of the court. The motion passed with Rep. Montayne dissenting.

Discussion was held on Rep. Keyser's original amendment to delete lines 4, 5, 6, 7 and 8 in their entirety.

Rep. Grady feels that by deleting this portion of the bill will bring us back to the original intent of the bill.

The question was called and Rep. Keyser's motion carried 11-5. (See roll call vote.)

Rep. Grady moved that HB 286 DO PASS AS AMENDED. The motion was seconded by Rep. Keyser and carried 15-2. (See roll call vote.)

ADJOURN: There being no further business, the meeting adjourned at 9:45 a.m.

Tom Hannah
REP. TOM HANNAH, Chairman

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 1-24-85

NAME	PRESENT	ABSENT	EXCUSE
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould			✓
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1-24-85 BILL NO. HB 286 TIME 9:00

NAME	AYE	NAY
Kelly Addy		✓
Toni Bergene	✓	
John Cobb	✓	
Paula Darko	✓	
Ralph Eudaily		✓
Budd Gould		
Edward Grady		✓
Joe Hammond	✓	
Kerry Keyser		✓
Kurt Krueger	✓	
John Mercer		✓
Joan Miles	✓	
John Montayne		✓
Jesse O'Hara		✓
Bing Poff		✓
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)		
Tom Hannah (Chairman)		✓

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Motion was made by Rep Krueger to table the bill until further action could be taken. Motion was seconded by Rep. Rapp-Svrcek. Motion failed 7-9.

CS-31

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1-24-85 BILL NO. HB 286 TIME 9:05

NAME	AYE	NAY
Kelly Addy		✓
Toni Bergene		✓
John Cobb		✓
Paula Darko		✓
Ralph Eudaily		✓
Budd Gould		
Edward Grady		✓
Joe Hammond		✓
Kerry Keyser		✓
Kurt Krueger	✓	
John Mercer	✓	
Joan Miles	✓	
John Montayne		✓
Jesse O'Hara		✓
Bing Poff		✓
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)		
Tom Hannah (Chairman)		✓

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Motion was made by Rep. Mercer to amend on page 2, line 5 of the bill by adding after "service" the words, "with the intent to obtain the utility service at less than its reasonable value." The motion was seconded by Rep. Eudaily, and it failed 4 to 12.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1-24-85 BILL NO. 286 TIME

NAME	AYE	NAY
Kelly Addy		
Toni Bergene		✓
John Cobb		✓
Paula Darko		✓
Ralph Eudaily		✓
Budd Gould		✓
Edward Grady		
Joe Hammond		✓
Kerry Keyser		✓
Kurt Krueger	✓	
John Mercer		✓
Joan Miles	✓	
John Montayne		✓
Jesse O'Hara		✓
Bing Poff		✓
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)		
Tom Hannah (Chairman)		✓

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Krueger moved to amend page 3, line 2 by striking the word, "shall" and inserting in lieu thereof the word, "may"; the amendment would also strike, "for" and insert "up to". Motion failed 13 to 3.

CS-31

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1-24-85 BILL NO. HB. 286 TIME 9:43

NAME	AYE	NAY
Kelly Addy		✓
Toni Bergene	✓	
John Cobb		✓
Paula Darko	✓	
Ralph Eudaily	✓	
Budd Gould		
Edward Grady	✓	
Joe Hammond		✓
Kerry Keyser	✓	
Kurt Krueger		✓
John Mercer	✓	
Joan Miles	✓	
John Montayne	✓	
Jesse O'Hara	✓	
Bing Poff	✓	
Paul Rapp-Svrcek		✓
Dave Brown (Vice Chairman)		
Tom Hannah (Chairman)	✓	

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Keyser moved to amend page 3, line 4 following the word, "provide" by striking lines 4, 5, 6, 7, and 8 in their entirety. The motion was seconded by Rep. Miles and carried 11 - 5.

CS-31

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1-24-85 BILL NO. 286 TIME 9:45

NAME	AYE	NAY
Kelly Addy		✓
Toni Bergene	✓	
John Cobb	✓	
Paula Darko	✓	
Ralph Eudaily	✓	
Budd Gould		
Edward Grady	✓	
Joe Hammond		✓
Kerry Keyser	✓	
Kurt Krueger	✓	
John Mercer	✓	
Joan Miles	✓	
John Montayne	✓	
Jesse O'Hara	✓	
Bing Poff	✓	
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)	✓	
Tom Hannah (Chairman)	✓	

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Grady moved that HB 286 DO PASS AS AMENDED.

The motion was seconded by Rep. Keyser and carried 15-2.

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL 246, 256 DATE 1-24-85

SPONSOR 246 (Rep Pinsell) 256 (Rep. Kitselman)

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
Larry Majerus	Helena	Div MT, Utah	✓	
Dave Dietrich	Kalispell	Pacific Power + Light	X	
John Alke	Helena	MDU	X	
Gerry Higgins	Regent			

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

FORM CS-33

STANDING COMMITTEE REPORT

January 24 19 85

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 286

FIRST reading copy (WHITE color)

PROVIDING CIVIL PENALTY FOR BYPASSING OR TAMPERING WITH UTILITY METER

HOUSE 286

Respectfully report as follows: That Bill No.

be amended as follows:

1. Page 3, line 4.
Following: "provided"
Strike: "and" through "case" on line 8.

2. Page 3, following line 3.
Strike: Section 5 in its entirety.

AND AS AMENDED

DO PASS

REP. TOM HANNAH Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

that will not happen. They will not pursue in that fashion. If they are looking for a deterrent, he will select a person he can apply that bill to and get his judgment. Mr. Phillips felt Mr. Alke's example was very good. It would be a well-known person and not the little old lady down the street. Mr. Zimmerman stated the deterrent value is in the initial publicizing of the fact the legislature passed the law and also in the cases you bring and are successful prosecuting. In bringing any case, the attorney and the client can say this case is not worth the money to bring the suit. They will exercise discretion. Senator Blaylock asked if they felt most of the people who were cheating were people who could pay. Mr. Alke replied quite honestly, that is true. The people who are the most successful at meter tampering are very sophisticated and know how to tamper with high voltage. We are talking about something mitigated, planned, and which takes a fair amount of intelligence to do.

CLOSING STATEMENT: Representative Kitselman stated this is a very serious matter. It was the people who had the knowledge of the meters and how to bypass that are doing this. Those that were servicing the meters were some of those doing the bypassing. It is generally done with people within the service industry that handles this. The intention of this bill is not to seek the person that is poverty stricken--it is the person that outright steals utility services day in and day out.

Hearing on HB 286 was closed.

CONSIDERATION OF HB 476: Representative Gary Spaeth, sponsor of the bill, testified this bill is relatively simple, but it has more than a simple impact. It allows concurrent jurisdiction with the justices of the peace for all misdemeanors. This would allow an impact on those high misdemeanors that are now only handled in district court and they could now be handled in justice court. That would allow the county attorney discretion as to whether it should be filed in district court or in justice court. The reasoning arose out of a situation in Red Lodge. The major impact this bill would have would be on third offense DUIs. The philosophy behind that is the district court is a tougher court, so we need really clamp down on that person. The justice of the peace is working with the person through that system and sees the person. He is willing to work and help solve that problem. Justices of the peace can do that on that third DUI, but then you go into the district court. Instead of that being the most serious crime, that is the district judge's least serious crime to deal with. His whole process is to get it out of the system. It is easier to get a better sentence out of the third DUI charge in district court than it is to get one from the justice of the peace on the second DUI. It would reduce the load in district court and result in tougher sentences and a better working relationship with the defendant because the justice of the peace will come down hard on him.

to prosecute, and they seldom recover any money from those who steal. He would like page 3, lines 8-12, reinserted so the utility could recover the costs of its prosecution. This is outright theft and stealing, for which the consumers are paying.

PROPONENTS: John Alke testified on behalf of Montana-Dakota Utilities Company. He hoped the provisions would never have to be utilized, but they need a deterrent. They are not stealing from the utilities. They are stealing from the utilities' customers. The cost is passed on to the customers. They have found that as they go to the various county attorneys, they are unwilling to prosecute. People need to know if they steal utility services and are caught, they are subject to penalties. He thinks it is critical to put the attorneys' fees provision back in. Going to court is a very expensive process. You cannot get a civil suit filed, prosecuted, and to judgment and pay for that lawsuit for the treble damages. The customers will be paying more just for prosecuting, so the customers will be paying more. Mr. Alke read a letter from Alec Hansen, Executive Director of the Montana League of Cities and Towns, supporting HB 286. Mike Zimmerman, representing The Montana Power Company, stood in support of HB 286 and circulated photographs to the committee showing various ways in which customers had been found stealing utility services. He testified tampering and theft is a problem, and they think HB 286 is appropriate policy to solve that problem. Gene Phillips, representing Pacific Power and Light Company, supported the bill and Mr. Alke's comments regarding attorneys' fees. Jay Downen, representing Montana Electric Cooperatives, testified when you have a larger utility, the burden to the individual honest consumers is less than when you have a cooperative with fewer consumers. He has seen underground bypasses and bird droppings on the bottom of meters which have been turned upside down. He didn't think honest consumers needed to absorb these losses.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Towe asked if it were true under the bill you could collect six times the amount. He referred to the language in section 3. It appeared you could collect six times. Mr. Alke stated that is not what was intended. It is the standard rule you are entitled to only one judgment. You have the right to elect who you would sue and recover from. Senator Towe asked if their concern for reasonable attorneys' fees was more important than the treble damages. Mr. Alke responded realistically, yes. The real expense is the litigation. Except for publicizing the bill, the treble damages would be more effective than the legal fees unless you have been through the system. Senator Towe questioned if there might be a problem if the attorneys' fees were unreasonable, such as in the case of $60 in stolen utilities and $1,500 or $2,000 in fees. Mr. Alke replied realistically,

totally addressing if there isn't sufficient money in the account and you can prove that. Senator Towe stated if the stop payment is issued only for the purpose of defeating the mechanic's lien, he thinks it is a good idea. Mr. Allen thought it should be narrowed down, but wanted to point out the intent to defraud was required under the bill.

CLOSING STATEMENT: None.

Hearing on HB 341 was closed.

CONSIDERATION OF HB 566: Representative Fred Thomas, sponsor of HB 566, testified this is an act to restrict installation and use of automatic dial-up security alarm systems. When such a system is triggered, it calls the local law enforcement agency. The law enforcement agency is may be responding but is unable to gain access to the system to turn it off, so the system continues to call the law enforcement office. That could be a real problem if not a headache. If you can't get into the residence to turn off the alarm, it will continue to call. Anyone wanting such a system would have to get permission from the law enforcement agency so they know what's happening.

PROPONENTS: Chuck O'Reilly, Lewis and Clark County Sheriff and President of the Montana Sheriffs' and Peace Officers' Association, spoke in support of the bill. He related an incident where during a power outage several alarms were triggered. Their continuous calling tied up all three emergency lines for 28 minutes. They are not trying to prohibit these systems, but they just want to control them. They will assign a certain number so it will not tie up their rotary system. John Scully, representing the Montana Sheriffs' and Peace Officers' Association, stated the telephone company worked out the proposed amendments before the committee, and he knows of no problems from the industry's standpoint.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: None.

CLOSING STATEMENT: None.

Hearing on HB 566 was closed.

ACTION ON HB 566: Senator Pinsoneault moved HB 566 be recommended BE CONCURRED IN. The motion carried unanimously.

CONSIDERATION OF HB 286: Representative Les Kitselman, sponsor of HB 286, testified this bill takes care of a problem known as theft of utility services. The utilities have to go through the county attorney

ROLL CALL

SENATE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985 Date 031285

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Bruce D. Crippen	X		
Senator Jack Galt	X		
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw	X		
Senator Thomas E. Towe	X		
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels	X		
Chairman Senator Joe Mazurek	X		

DATE March 12, 1985

COMMITTEE ON Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Chuck O'Reilly	Int. Assoc. of Fire Fighters & Peace Officers Assn.	HB566	✓	
[illegible] Spaeth				
[illegible] Kerbaugh				
[illegible] Connoch				
[illegible] Stacks				
[illegible] Watson				
[illegible] Armstrong				
[illegible] Kalvaitis				
[illegible] Mark				
[illegible] Halsor				
[illegible]				
[illegible] Schendel				
Colleen Minnehan				
Vonne Chester				
[illegible]				
[illegible] Sportsmen				
[illegible]				
Lisa Dick				
[illegible] Hammond				
[illegible] McKenzie				
Matt Davidson				
Kim Wilkes				
[illegible]				
Carol Briggs	Mental Health	HB 579	✓	
Dick Krueske	Mental Health Assn	HB 579	✓	
Mike Zimmerman	MPC	HB 286	✓	

(Please leave prepared statement with Secretary)

DATE

COMMITTEE ON

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
GENE PHILLIPS	PACIFIC POWER & LIGHT	HB 286	X	
JAY DOWNER	Montana Electric Cooperatives	HB 281	X	
Dave Crow	Montana Health Centers	HB 579	X	
Carol Fitch	Mt. Chapter of Planned Parenthood	HB 568	X	
GEO. OCHENSKI	ENV. INF. CENTER	HB 181	X	
Jamilla Fallon	YWCA Women		X	
Kelly Moore	Board of Visitors	HB 579	X	

(Please leave prepared statement with Secretary)

Montana League of Cities and Towns

P.O. BOX 1704 HELENA, MONTANA 59624 PHONE (406) 442-8768

Gene Pigeon
Montana Dakota Utilities
Helena, MT 59620

Dear Mr. Pigeon:

As I indcated, Montana cities and towns support HB286, the measure to impose civil penalties for tampering with or bypassing utility meters.

Municipal governments operate most of the water and sewer systems in the state of Montana, and metered service is becoming more prevalent. The problem of tampering with or bypassing meters is as serious for municipal systems as the public or cooperative utilities.

State law requires payment by any person or organization on municipal water or sewer service. Delinquent payments are a continuing problem, but HB 286 does offer a remedy for those who would deliberately avoid their fair share of the cost of service by tampering with or by passing meters.

This bill is a a guarantee of fairness in utility operation. All people who use water and sewer service are obligated to pay a share of the costs. The penalties provided for in this bill should provide some assurance that a few customers will not take a free ride at the expense of the others on the system.

I intend to testify at the Senate hearing on HB 286, if this is not possible because of a time conflict, please have this letter entered into the record.

Sincerely,

Alec N. Hansen
Executive Director

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 031285
BILL NO. HB 286

effect of legitimizing the old bear and bull fights in Montana. Senator Mazurek suggested changing the wording to "or mammel." He then asked Mr. Petesch to work on these amendments. Senator Towe also stated he had some trouble with "participants." He suggested we strike the word "such" on page 3, line 2, and replace it with the word "any." He also suggested changing the wording on page 3, line 3, to read "exhibition in which animals are fighting, for the purpose of . . . ." He believes that would limit it to a participant.

TABLING OF HB 353: Senator Mazurek stated he thinks this goes too far. He believes it's burglary to even enter a residence. If you intend to commit any offense (trespass), that makes it aggravated burglary. Senator Towe pointed out weapons or bodily injury must result. There also must be intent to commit an offense. Senator Pinsoneault stated this bill expands the scope of present law. Mr. Petesch pointed out the biggest effect of this would be if the guy takes less than $300 worth of merchandise and he negligently injures somebody, not only is it burglary, now it is aggravated burglary. Senator Blaylock asked if the bill were needed. Senator Towe replied it's okay. Senator Pinsoneault did not feel it was earthshaking. Senator Towe pointed out the penalty for aggravated burglary is 40 years and a $50,000 fine, while the penalty for non-aggravated burglary is 10 years and a $50,000 fine. Senator Blaylock moved HB 353 be TABLED. The motion carried with Senators Brown, Galt, and Pinsoneault voting in opposition.

ACTION ON HB 371: Mr. Petesch stated looking at the accession provision of the Uniform Commercial Code law, the UCC covers accessions, and the question becomes when the security interest attaches. Under the UCC, if the vehicle is sold, that cuts off that security interest. The problem that is unaddressed is where the bank makes a loan to buy the truck, the tires are put on, and the bank repossesses. Senator Mazurek pointed out this bill speaks only to the repossession. Senator Towe stated it is addressed if the bank makes an extension of credit after the tires are mounted, then the bank's interest is supplemental only to the extent new money is lent by the bank. He felt the UCC covers a bona fide purchaser. Senator Shaw moved HB 371 be recommended BE CONCURRED IN. The motion carried unanimously.

ACTION ON HB 286: Senator Towe moved HB 286 be amended as follows:

1. Page 2, line 20.
Following: "utility."
Insert: "Collection under subsection (2) precludes collection under this subsection."

2. Page 2, line 25.
Following: "utility."
Insert: "Collection under subsection (1) precludes collection under this subsection."

The motion carried unanimously. Senator Towe moved the bill be further amended as follows:

Page 3, line 6.
Following: "court"
Strike: "shall"
Insert: "may"
Following: "for"
Insert: "up to"

Senator Mazurek commented the court can only enter the judgment on the finding of liability. If you want to address that, you should put the modifier in the amount of the judgment. Senator Towe replied the point may be the case was brought against somebody who bypasses knowingly or rents a house and the tenant bypasses. Senator Pinsoneault stated he liked Senator Towe's proposal because judges hate to be tied down. The motion carried with Senator Mazurek voting in opposition. Senator Blaylock moved HB 286 be amended as follows:

Page 3, line 8.
Following: "provided"
Insert: "and may award to the utility its costs, including reasonable attorney fees, incurred in maintaining the action and the costs, including expert witness fees, of presenting such expert testimony as is reasonably necessary to prove the utility's case"

The motion carried with Senator Mazurek voting in opposition. Senator Blaylock moved HB 286 be recommended BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ACTION ON HB 801: Senator Towe moved HB 801 be amended as follows:

Page 3, line 16.
Following: "3."
Strike: "Application in 1985."
Insert: "Applicability date. This act is applicable to fiscal years following June 30, 1985."

Mr. Petesch explained this means you use calendar year 1984 experience, but it kicks in in 1986. The motion carried unanimously. Senator Towe

ROLL CALL

SENATE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985 Date 02/25/85

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Bruce D. Crippen			X
Senator Jack Galt	X		
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw	X		
Senator Thomas E. Towe	X		
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels			
Chairman Senator Joe Mazurek	X		

STANDING COMMITTEE REPORT

March 15 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 286

third reading copy (blue color)

(Senator Crippen)

PROVIDING CIVIL PENALTY FOR BYPASSING OR TAMPERING WITH UTILITY METER

Respectfully report as follows: That HOUSE BILL No. 286

be amended as follows:

1. Page 2, line 20.
Following: "utility."
Insert: "Collection under subsection (2) precludes collection under this subsection."

2. Page 2, line 25.
Following: "utility."
Insert: "Collection under subsection (1) precludes collection under this subsection."

3. Page 3, line 6.
Following: "court"
Strike: "shall"
Insert: "may"
Following: "for"
Insert: "up to"

4. Page 3, line 8.
Following: "provided"
Insert: "and may award to the utility its costs, including reasonable attorney fees, incurred in maintaining the action and the costs, including expert witness fees, of presenting such expert testimony as is reasonably necessary to prove the utility's case"

AND AS AMENDED

BE CONCURRED IN

~~XXXXXX~~

~~XXXXXXXXX~~

Senator Joe Mazurek Chairman.